

REMARKS

The Decision on Appeal reversed the rejection of claims 1, 7-13, 16-20 and 22 under 35 U.S.C 102 as anticipated by Swanson, and reversed the rejection of claims 1-3, 14-15 and 21-22 as anticipated by Yencho. The Board also entered a new ground of rejection that claims 1-3 and 7-22 fail to comply with the written description requirement of 35 U.S.C. 112.

35 U.S.C. §112

The Decision on Appeal stated that the specification does not “reasonably convey possession of a method where the first flange [of the anastomosis device] is completely formed and, after manipulation is complete, moved into contact with the wall of the target vessels [*sic*].” (Decision on Appeal, page 13, first full paragraph). However, the Board overlooked the disclosure of page 15, lines 20-25:

[T]he first annular flange is deployed by advancing the expander tube 156 into the anastomosis device. The advancing of the expander tube 156 increases the diameter of the anastomosis device 120 causing the first flange to fold outward from the device. This expanding of the first flange may be performed inside the vessel and then the device 120 may be drawn back until the flange abuts an interior of the target vessel wall. (emphasis added).

Thus, the specification expressly describes the claimed subject matter that was rejected by the Board as failing to comply with the written description requirement.

Consequently, claim 1 is in condition for allowance. Claims 2-3 and 7-22 depend from claim 1, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

In accordance with MPEP 1214.01, the “new ground of rejection raised by the Board does not reopen prosecution except as to that subject matter to which the new rejection was applied.” The portion of the specification particularly pointed out above overcomes the new ground of rejection raised by the Board. No new search is required.

REQUEST FOR ALLOWANCE

Allowance of the pending claims is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,

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